

HOUSE BILL 1443

By Turner L

AN ACT to amend Tennessee Code Annotated, Title 29;
Title 35; Title 45; Title 47 and Title 66, relative to
foreclosures.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-5-101, is amended by deleting subsection (b) and substituting instead the following:

(b) The first publication shall be at least ninety (90) days previous to the sale.

SECTION 2. Tennessee Code Annotated, Title 35, Chapter 5, Part 1, is amended by adding the following new section thereto:

Section 35-5-117.

(1) When the written notice required under Section 35-5-101 is provided a party foreclosing on a mortgage must provide to the mortgagor information that:

(A) Foreclosure prevention counseling services provided by an authorized foreclosure prevention counseling agency are available; and

(B) The party will transmit the debtor's name, address, and telephone number to an approved foreclosure prevention agency.

(2) For the purposes of this section, an "authorized foreclosure prevention counseling agency" is a nonprofit agency approved by the Tennessee housing development agency or the United States department of housing and urban development to provide foreclosure prevention counseling services.

(3) The party entitled to foreclose shall, within one (1) week of publishing the notice prescribed in Section 35-5-101, provide to the appropriate authorized foreclosure prevention agency the mortgagor's name, address, and most recent known telephone number.

(4) An authorized foreclosure prevention agency that contacts or is contacted by a mortgagor or the mortgagor's authorized representative and agrees to provide foreclosure prevention assistance services to the mortgagor or representative must provide the form prescribed in Section to the mortgagee or trustee. The form serves as notice to the mortgagee or trustee that the mortgagor is receiving foreclosure prevention counseling assistance.

(5) The mortgagee or trustee must return the form to the authorized foreclosure prevention agency within fifteen (15) days of receipt of the form with the name and telephone number of the mortgagee's agent. The agent must be a person authorized by the mortgagee to:

(A) Discuss with the authorized foreclosure prevention agency or the mortgagor the terms of the mortgage; and

(B) Negotiate any resolution to the mortgagor's default.

(6) Nothing in this subsection requires a mortgagee or trustee to reach a resolution relating to the mortgagor's default.

SECTION 3. Tennessee Code Annotated, Title 35, Chapter 5, Part 1, is further amended by adding a new section thereto, as follows

Section 35-5-118. The notice required under Section 35-5-117 must be printed on colored paper that is other than the color of any other document provided with it and must appear substantially as follows:

PREFORECLOSURE NOTICE

Foreclosure Prevention Counseling

Why You Are Getting This Notice:

We do not want you to lose your home and your equity. Government-approved nonprofit agencies are available to, if possible, help you prevent foreclosure. We have given your contact information to an authorized foreclosure prevention counseling agency to contact you to help you prevent foreclosure.

Who Are These Foreclosure Prevention Counseling Agencies?

They are nonprofit agencies who are experts in housing and foreclosure prevention counseling and assistance. They are experienced in dealing with lenders and homeowners who are behind on mortgage payments and can help you understand your options and work with you to address your delinquency. They are approved by either the Tennessee Housing Development Agency or the United States Department of Housing and Urban Development. They are not connected with us in any way.

Which Agency Will Contact You:

[insert name, address, and telephone number of agency]

You can also contact them directly."

SECTION 4. Tennessee Code Annotated, Title 45, Chapter 14, Part 1, is amended by adding a new section thereto, as follows:

Section 45-13-130.

(a) No mortgage loan originator shall make, provide, or arrange for a residential mortgage loan that is of a lower investment grade if the borrower's credit score or, if the originator does not utilize credit scoring or if a credit score is unavailable, then comparable underwriting data, indicates that the borrower may qualify for a residential mortgage loan, available from or through the originator, that is of a higher investment grade, unless the borrower is informed that the borrower may qualify for a higher investment grade loan with a lower interest rate or lower discount points, and consents in writing to receipt of the lower investment grade loan.

(b) For purposes of this section, "investment grade" refers to a system of categorizing residential mortgage loans in which the loans are:

(1) Commonly referred to as "prime" or "subprime";

(2) Commonly designated by an alphabetical character with "A" being the highest investment grade; and

(3) Are distinguished by interest rate or discount points or both charged to the borrower, which vary according to the degree of perceived risk of default based on factors such as the borrower's credit, including credit score and credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior bankruptcy or foreclosure.

(c) No mortgage loan originator shall:

(1) Make, publish, disseminate, circulate, place before the public, or cause to be made, directly or indirectly, any advertisement or marketing materials of any type, or any statement or representation relating to the business of residential mortgage loans that is false, deceptive, or misleading.

(2) Advertise loan types or terms that are not available from or through the licensee or exempt person on the date advertised, or on the date specified in the advertisement. For purposes of this clause, advertisement includes, but is not limited to, a list of sample mortgage terms, including interest rates, discount points, and closing costs provided by licensees or exempt persons to a print or electronic medium that presents the information to the public.

(3) Use or employ phrases, pictures, return addresses, geographic designations, or other means that create the impression, directly or indirectly, that a licensee or other person is a governmental agency, or is associated with,

sponsored by, or in any manner connected to, related to, or endorsed by a governmental agency, if that is not the case.

(4) Make, provide, or arrange for a residential mortgage loan all or a portion of the proceeds of which are used to fully or partially pay off a "special mortgage" unless the borrower has obtained a written certification from an authorized independent loan counselor that the borrower has received counseling on the advisability of the loan transaction. For purposes of this section, "special mortgage" means a residential mortgage loan originated, subsidized, or guaranteed by or through a state, or local government, or nonprofit organization, that bears one (1) or more of the following nonstandard payment terms which substantially benefit the borrower:

(A) Payments vary with income;

(B) Payments of principal or interest are not required or can be deferred under specified conditions;

(C) Principal or interest is forgivable under specified conditions; or

(D) Where no interest or an annual interest rate of two percent (2%) or less is charged in connection with the loan.

For purposes of this section, "authorized independent loan counselor" means a nonprofit, third-party individual or organization providing homebuyer education programs, foreclosure prevention services, mortgage loan counseling, or credit counseling certified by the United States department of housing and urban development, the Tennessee housing and development agency, or other such entity.

(5) Make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the scheduled payments of the

following, as applicable: principal, interest, real estate taxes, homeowner's insurance, assessments and mortgage insurance premiums. For loans in which the interest rate may vary, the reasonable ability to pay shall be determined based on a fully indexed rate and a repayment schedule which achieves full amortization over the life of the loan. For all residential mortgage loans, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other similarly reliable documents.

(d) Nothing in this section shall be construed to limit a mortgage originator's or exempt person's ability to rely on criteria other than the borrower's income and financial resources to establish the borrower's reasonable ability to repay the residential mortgage loan, including criteria established by the United States department of veterans affairs or the United States Department of housing and urban development for interest rate reduction refinancing loans or streamline loans, or criteria authorized or promulgated by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; however, such other criteria must be verified through reasonably reliable methods and documentation. The mortgage originator's analysis of the borrower's reasonable ability to repay may include, but is not limited to, consideration of the following items, if verified:

- (1) The borrower's current and expected income;
- (2) Current and expected cash flow;
- (3) Net worth and other financial resources other than the consumer's equity in the dwelling that secures the loan;
- (4) Current financial obligations;
- (5) Property taxes and insurance;
- (6) Assessments on the property;

- (7) Employment status;
- (8) Credit history;
- (9) Debt-to-income ratio;
- (10) Credit scores;
- (11) Tax returns;
- (12) Pension statements; and

(13) Employment payment records, provided that no mortgage loan originator shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete. A statement by the borrower to the residential mortgage originator or exempt person of the borrower's income and resources or sole reliance on any single item listed above is not sufficient to establish the existence of the income or resources when verifying the reasonable ability to pay.

SECTION 5. This act shall take effect July 1, 2009, the public welfare requiring it.